

161
Attorney Docket No.: 6631-27092
PATENT



Handwritten notes: #18/AF, App. Brief, set 4/4/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: W. Gregory Chernoff Conf. No. 6811
Serial No.: 09/785,715 Group: 3739
Filed: February 16, 2001 Examiner: Farah, Ahmed M.
For: Tissue Treatment Method

REQUEST TO ACCEPT REPLACEMENT COPY OF THE APPEAL BRIEF
AND TO EXPEDITE THE APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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TECHNOLOGY CENTER R3700

Sir:

This is a request to accept the attached copy (in triplicate) of the appeal brief filed April 8, 2004.

A recent telephone call from examiner Farah indicated the appeal brief had not been filed. Counsel for applicant checked the U.S. Patent and Trademark Office (USPTO) patent application and information retrieval (PAIR) web site and confirmed that the appeal brief filed April 8, 2004 has not yet been entered into the electronic data base and has apparently been lost in the USPTO.

Attached hereto is a copy of the receipt card showing the Appeal Brief (in triplicate)" was received by OIPE section of the USPTO on "APR 08 2004". The undersigned attorney hereby states that the attached APPEAL BRIEF is a true copy from our files of the brief filed April 8, 2004.

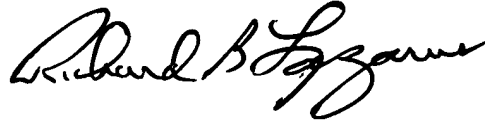
In view of the above, it is requested that the appeal brief be entered and that the application processing proceed on an expedited basis.

If there are any questions or anything else is needed please contact the undersigned attorney.

In view of the above facts, it is submitted that this request is properly considered under 37 C.F.R. 1.181(a) without any fee. However, if a petition fee is due, such fee is authorized to be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (6631-27092).

Respectfully submitted,

BARNES & THORNBURG

A handwritten signature in cursive script, appearing to read "Richard B. Lazarus".

Richard B. Lazarus
Reg. No. 48,215
(202) 371-6348



Mailed: April 5, 2004
Inventor: W. Gregory Chernoff
Title: TISSUE TREATMENT METHOD
Serial No. 09/785,715
Filed: February 16, 2001
Docket: 6631-27092



X Certificate Under 37 CFR 1.8(a)
X Appeal Brief (*in triplicate*)

The stamp of the Patent Office hereon shows receipt of the indicated papers

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BARNES & THORNBURG LLP

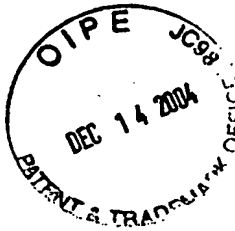
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6631-27092

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group: 3739
Confirmation No.: 6811
Application No.: 09/785,715
Invention: Tissue Treatment Method
Applicant: W. Gregory Chernoff
Filed: February 16, 2001
Attorney
Docket: 6631-27092
Examiner: Ahmed M. Farrah

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on April 5, 2004

Kim Tyree
(Signature)

Kim Tyree
(Printed Name)

APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

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TECHNOLOGY CENTER R3700

Sir:

This appeal brief is submitted in triplicate in furtherance of the appeal taken February 5, 2004. The Commissioner is hereby authorized to charge the \$165 fee for filing this appeal brief, as well as any other fees which may be necessary to constitute this a timely filed appeal brief, to Appellant's undersigned counsel's deposit account 10-0435, with reference to file number 6631-27092. A duplicate copy of this authorization is enclosed for this purpose.

Real Party In Interest

The inventor, W. Gregory Chernoff, is the real party in interest.

Related Appeals and Interferences

There are no related appeals or interferences of which the undersigned is aware.

Status of Claims

Claims 1, 2 and 4-12, all of the claims in this application, are finally rejected. The final rejections of all of claims 1, 2 and 4-12 are appealed.

Status of Amendments

The amendment filed subsequent to final rejection was entered for purposes of correcting informalities in the claims. See the January 27, 2004 advisory action, paragraph 1.

Summary of the Invention

The invention may best be understood by referring to the appealed claims 1, 2 and 4-12, annotated with parenthetical notes from the application as filed.

With reference to claim 1, a method of treatment of a scar comprises alternately applying topical fluid silicone gel not released from silicone gel sheeting to the scar (A polysiloxane derivative that is marketed under the trade name Kelo-cote was chosen as the topical silicone gel. Page 4, lines 26-27), and applying silicone gel sheeting to the scar (The remaining sixty scars were divided into two groups. One group had a combination of topical silicone gel application during the day followed by silicone gel sheeting at night. Page 5, lines 1-3).

With reference to claim 2, claim 1's step of applying a topical fluid silicone gel not released from silicone gel sheeting to the scar further includes wiping off the excess fluid silicone gel to leave a thin layer of the fluid silicone gel on the scar (When a small amount of the polymer is applied, the molecules orient themselves one layer thick once the excess is wiped away from the affected area. Page 4, lines 2-3).

With reference to claim 4, a method of treatment of a scar comprises treating the scar with laser therapy, and applying a topical fluid silicone gel not released from silicone gel sheeting to the scar (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585

nm. with energy densities ranging 6.0 - 7.5 joules per cm^2 and spot sizes of 5 or 7 mm. The other half of these received long pulsed green light laser therapy at 532 nm., 50 millisecond pulse widths and a 5 mm. spot size. The third group also received .2 cc. of Kenalog-10 immediately after laser therapy. Page 6, lines 6-14).

With reference to claim 5, claim 4's step of treating the scar with laser therapy further comprises treating the scar with flash lamp pumped pulse dye laser therapy (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per cm^2 and spot sizes of 5 or 7 mm. Page 6, lines 6-12).

With reference to claim 6, claim 4's step of treating the scar with laser therapy comprises treating the scar with laser therapy with energy densities ranging from about 6.0 joules per cm^2 to about 7.5 joules per cm^2 (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per cm^2 and spot sizes of 5 or 7 mm. Page 6, lines 6-12).

With reference to claim 7, claim 4's step of treating the scar with laser therapy comprises treating the scar with laser therapy with spot sizes in the range of about 5 mm. to about 7 mm (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per cm^2 and spot sizes of 5 or 7 mm. Page 6, lines 6-12).

With reference to claim 8, claim 4's step of treating the scar with laser therapy comprises treating the scar with laser therapy with energy having wavelengths in the range of about 585 nm (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well

as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per cm² and spot sizes of 5 or 7 mm. Page 6, lines 6-12).

With reference to claim 9, claim 4's step of treating the scar with laser therapy comprises treating the scar with long pulsed laser therapy (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per cm² and spot sizes of 5 or 7 mm. The other half of these received long pulsed green light laser therapy at 532 nm., 50 millisecond pulse widths and a 5 mm. spot size. Page 6, lines 6-13).

With reference to claim 10, claim 9's step of treating the scar with laser therapy comprises treating the scar with pulsed laser therapy having pulse widths in the range of about 50 milliseconds (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per cm² and spot sizes of 5 or 7 mm. The other half of these received long pulsed green light laser therapy at 532 nm., 50 millisecond pulse widths and a 5 mm. spot size. Page 6, lines 6-13).

With reference to claim 11, claim 10's step of treating the scar with laser therapy comprises treating the scar with laser therapy with spot sizes in the range of about 5 mm (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per centimeter squared and spot sizes of 5 or 7 mm. The other half of these received long pulsed green light laser therapy at 532 nm., 50 millisecond pulse widths and a 5 mm. spot size. Page 6, lines 6-13).

With reference to claim 12, claim 4's step of treating the scar with laser

therapy comprises treating the scar with laser therapy with energy having wavelengths in the range of about 532 nm (The third group of patients were asked to wear the silicone gel sheeting at night and apply the topical silicone gel during the day. When compared to either treatment modality alone, this treatment provided a faster rate of erythema resolution as well as more rapidly decreasing scar height. These results were statistically significant to a P value of .01. Half of these also received flash lamp pumped pulse dye laser therapy at 585 nm. with energy densities ranging 6.0 - 7.5 joules per centimeter squared and spot sizes of 5 or 7 mm. The other half of these received long pulsed green light laser therapy at 532 nm., 50 millisecond pulse widths and a 5 mm. spot size. Page 6, lines 6-13).

Issues

The sole issue on appeal is whether claims 1, 2 and 4-12 are entitled to a filing date before September 7, 2000.

Grouping of Claims

All of claims 1, 2 and 4-12 are believed to be separately patentable, at least for the reasons set forth above in the **Summary of the Invention**.

Argument

35 U. S. C. § 120 provides, in pertinent part:

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application [].

In the final official action of September 29, 2003 the Examiner rejected claims 1, 2 and 4-12 under 35 U. S. C. § 103. The Examiner relied upon various combinations of references. All of these combinations included Blaine U. S. Patent 6,572,878 (hereinafter Blaine).

According to paragraph 2 of the January 27, 2004 advisory action,

Applicant's arguments filed January 2, 2004, have been fully considered but they are not persuasive. The applicant's representative argues that Blaine U. S. Patent No. 6,572,878 'is not prior art to the present application, which claims priority to a provisional application 60/063,754, filed on October 17, 1997.'

In response to this argument, the present application claims priority to U. S. Patent application 09/173,990, filed on October 16, 1998, which claims priority to a provisional application 60/063,754, filed on October 17, 1997. However, the claimed priority is not given to the present application. This is due to the fact that the present application was filed on February 16, 2001, which is three months after the abandonment date (November 18, 2000) of the U. S. application 09/173,990. Hence, the effective filing date of the present application is February 16, 2001. Therefore, the examiner's position is that Blaine, which has an effective filing date of September 7, 2000, is prior art to the present application.

Of course, a petition for an extension of time to respond to the August 17, 2000 official action in U. S. S. N. 09/173,990 was filed in the same Express Mail package, mailed February 16, 2001, with the present application. That petition, a copy of which is attached to this brief as an exhibit for the Board's convenience, provides in pertinent part,

Applicant hereby petitions for a three moth extension of time to respond to the August 17, 2000 official action. This extension is sought to achieve copendency with the continuation application which is being filed herewith. A check is presented herewith, including the \$445.00 fee for this extension of time. The Commissioner is hereby authorized to charge any additional fees in connection with this response, or credit any overpayment, to Applicants' (sic) undersigned counsel's deposit account [].

This application was also filed with a utility patent application transmittal form, a copy of the first sheet of which is attached to this brief as an exhibit for the Board's convenience. That utility patent application transmittal form identified this application as a "Continuation of prior application No.: 09/173,990." This application thus was duly, regularly and correctly permitted to claim the benefit of the filing dates of both U. S. S. N. 09/173,990 and U. S. S. N. 60/063,754. See the official filing receipt attached to this brief as an exhibit for the Board's convenience. Further, the first page of this application was amended to include the following cross-reference to U. S. S. N. 09/173,990 and U. S. S. N. 60/063,754:

This disclosure is a continuation of U. S. Application No. 09/173,990, which was filed on October 16, 1998, is now

abandoned, and claimed priority to U. S. Provisional Application No. 60/063,754, filed on October 17, 1997.

At no point during the pendency of this application prior to the January 27, 2004 advisory action did anyone at the Patent Office question Applicant's claim of priority, and with good reason. The claim of priority is proper.

Summary and Conclusion

Thus, this application is properly entitled to the October 16, 1998 filing date of U. S. S. N. 09/173,990 and, through U. S. S. N. 09/173,990, to the October 17, 1997 filing date of U. S. S. N. 60/063,754. Therefore, Blaine, which on its face is entitled only to a September 7, 2000 filing date, is not a reference against the claims of this application.

Accordingly, Appellant submits that the final rejection of his claims 1, 2 and 4-12 is erroneous and should be reversed. Such action is respectfully requested.

Respectfully submitted,



Richard D. Conard
Attorney Reg. No. 27321
Attorney for Appellant

Indianapolis, Indiana
(317)231-7285
INDS02 RDC 627461

The Claims On Appeal

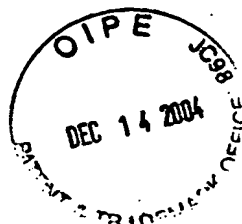
1. A method of treatment of a scar comprising alternately applying a topical fluid silicone gel not released from silicone gel sheeting to the scar, and applying silicone gel sheeting to the scar.
2. The method of claim 1 wherein the step of applying a topical fluid silicone gel not released from silicone gel sheeting to the scar further includes wiping off the excess fluid silicone gel to leave a thin layer of the fluid silicone gel on the scar.
4. A method of treatment of a scar comprising treating the scar with laser therapy, and applying a topical fluid silicone gel not released from silicone gel sheeting to the scar.
5. The method of claim 4 wherein the step of treating the scar with laser therapy comprises treating the scar with flash lamp pumped pulse dye laser therapy.
6. The method of claim 4 wherein the step of treating the scar with laser therapy comprises treating the scar with laser therapy with energy densities ranging from about 6.0 joules per centimeter squared to about 7.5 joules per centimeter squared.
7. The method of claim 4 wherein the step of treating the scar with laser therapy comprises treating the scar with laser therapy with spot sizes in the range of about 5 mm. to about 7 mm.
8. The method of claim 4 wherein the step of treating the scar with laser therapy comprises treating the scar with laser therapy with energy having wavelengths in the range of about 585 nm.
9. The method of claim 4 wherein the step of treating the scar with laser therapy comprises treating the scar with long pulsed laser therapy.
10. The method of claim 9 wherein the step of treating the scar with laser therapy comprises treating the scar with pulsed laser therapy having pulse widths in the range

of about 50 milliseconds.

11. The method of claim 10 wherein the step of treating the scar with laser therapy comprises treating the scar with laser therapy with spot sizes in the range of about 5 mm.

12. The method of claim 4 wherein the step of treating the scar with laser therapy comprises treating the scar with laser therapy with energy having wavelengths in the range of about 532 nm.

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group: 3739

Attorney

Docket: 6631-27092

Applicant: W. Gregory Chernoff

Invention: TISSUE TREATMENT METHOD

Serial No: 09/173,990

Filed: Herewith (February 16, 2001)

Examiner: A. Farah

Certificate Under 37 CFR 1.8(a)

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on _____

Kim Tyree

Dated: _____

PETITION FOR EXTENSION OF TIME

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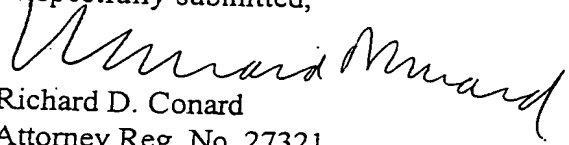
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Sir:

Applicant hereby petitions for a three month extension of time to respond to the August 17, 2000 official action. This extension is sought to achieve copendency with the continuation application which is being filed herewith. A check is presented herewith, including the \$445.00 fee for this extension of time. The Commissioner is hereby authorized to charge any additional fees in connection with this response, or credit any overpayment, to Applicants' undersigned counsel's deposit account 10-0435, referencing Applicants' undersigned counsel's file 6631-27092. A duplicate copy of this authorization is enclosed for this purpose.

Accordingly, Applicant submits that this application is now in condition for favorable consideration, culminating in allowance. Such action is respectfully requested.

Respectfully submitted,



Richard D. Conard
Attorney Reg. No. 27321
Attorney for Applicants

RDC/kat
INDS02 RDC 364597v1

UTILITY PATENT APPLICATION TRANSMITTAL

(Small Entity)

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Docket No.
6631-27092

Total Pages in this Submission
18

TO THE ASSISTANT COMMISSIONER FOR PATENTS

Box Patent Application
Washington, D.C. 20231

Transmitted herewith for filing under 35 U.S.C. 111(a) and 37 C.F.R. 1.53(b) is a new utility patent application for an invention entitled:

TISSUE TREATMENT METHOD

and invented by:

W. Gregory Chernoff

If a CONTINUATION APPLICATION, check appropriate box and supply the requisite information:

☒ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.: 09/173,990

Which is a:

☐ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.:

Which is a:

☐ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.:

Enclosed are:

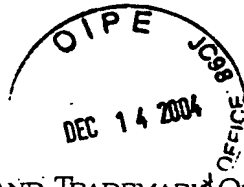
Application Elements

1. ☒ Filing fee as calculated and transmitted as described below
2. ☒ Specification having 9 pages and including the following:
 - a. ☒ Descriptive Title of the Invention
 - b. ☐ Cross References to Related Applications (if applicable)
 - c. ☐ Statement Regarding Federally-sponsored Research/Development (if applicable)
 - d. ☐ Reference to Microfiche Appendix (if applicable)
 - e. ☒ Background of the Invention
 - f. ☒ Brief Summary of the Invention
 - g. ☐ Brief Description of the Drawings (if drawings filed)
 - h. ☒ Detailed Description
 - i. ☒ Claim(s) as Classified Below
 - j. ☒ Abstract of the Disclosure

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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
09/785,715	02/16/2001	3739	355	6631-27092		12	1

BARNES & THORNBURG
11 South Meridian Street
Indianapolis, IN 46204

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MAR 26 2001

BARNES & THORNBURG

CONFIRMATION NO. 6811

FILING RECEIPT



OC000000005876333

Date Mailed: 03/19/2001

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

W. Gregory Chernoff, Indianapolis, IN;

Continuing Data as Claimed by Applicant

THIS APPLICATION IS A CON OF 09/173,990 10/16/1998
WHICH CLAIMS BENEFIT OF 60/063,754 10/17/1997

Foreign Applications

If Required, Foreign Filing License Granted 03/17/2001

Projected Publication Date: 06/28/2001

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

Tissue treatment method

Preliminary Class

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607

Data entry by : YOSEPH, LETEYESUS

Team : OIPE

Date: 03/19/2001



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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

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NOT GRANTED

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- The words "new," "improved," "improvements in" or "relating to" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 600 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

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Office of Initial Patent Examination
Customer Service Center
Washington, DC 20231